

## HOUSE BILL NO. 104

INTRODUCED BY P. CLARK

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CONVICTED PERSON OR THE PROSECUTOR MAY REQUEST THAT THE SENTENCING COURT MODIFY A WRITTEN JUDGMENT TO CONFORM IT TO THE ORAL PRONOUNCEMENT OF SENTENCE OR OTHER DISPOSITION; PROVIDING THAT A CONVICTED PERSON OR PROSECUTOR WHO FAILS TO REQUEST MODIFICATION OF A WRITTEN JUDGMENT WITHIN 120 DAYS AFTER FILING OF THE WRITTEN JUDGMENT WAIVES THE RIGHT TO REQUEST A MODIFICATION OF THE WRITTEN JUDGMENT; ~~PROVIDING THAT THE WRITTEN JUDGMENT GENERALLY CONTROLS OVER THE ORAL PRONOUNCEMENT;~~ PROVIDING THAT A FACTUALLY ERRONEOUS JUDGMENT MAY BE CORRECTED AT ANY TIME; AMENDING SECTIONS SECTION 46-18-116 AND 46-18-117, MCA; REPEALING SECTION 46-18-117, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND ~~A RETROACTIVE~~ AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 46-18-116, MCA, is amended to read:

**"46-18-116. Judgment -- conflict between written judgment and oral pronouncement -- CORRECTION OF FACTUALLY ERRONEOUS SENTENCE OR JUDGMENT.** (1) The judgment must set forth the plea, verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The judgment must be signed and entered on the record. AT THE TIME THAT THE JUDGMENT IS ENTERED ON THE RECORD, THE COURT FILED, THE PROSECUTOR OF THE COUNTY IN WHICH THE SENTENCE WAS IMPOSED SHALL GIVE THE DEFENDANT SERVE A COPY OF THE JUDGMENT AND A COPY OF ON THE DEFENDANT. THE WRITTEN JUDGMENT MUST INCLUDE A STATEMENT OF THE RIGHTS SET FORTH IN SUBSECTION (2).

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant OR THE PROSECUTOR IN THE COUNTY IN WHICH THE SENTENCE WAS IMPOSED may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement AT A HEARING, AND THE DEFENDANT MUST BE PRESENT AT THE HEARING UNLESS THE DEFENDANT WAIVES THE RIGHT TO BE

PRESENT OR ELECTS TO PROCEED PURSUANT TO 46-18-115. The defendant ~~waives~~ AND THE PROSECUTOR WAIVE the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment IN THE SENTENCING COURT.

~~(3) Except as provided in subsection (2), if a written judgment and an oral pronouncement of the sentence or other disposition conflict, the written judgment controls.~~

(3) THE COURT MAY CORRECT A FACTUALLY ERRONEOUS SENTENCE OR JUDGMENT AT ANY TIME. ILLEGAL SENTENCES MUST BE ADDRESSED IN THE MANNER PROVIDED BY LAW FOR APPEAL AND POSTCONVICTION RELIEF."

~~Section 2. Section 46-18-117, MCA, is amended to read:~~

~~"46-18-117. Correction of sentence. The Except as provided in 46-18-116, the THE court may correct an erroneous sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court. An ERRONEOUS SENTENCE OR ERRONEOUS DISPOSITION IS ONE THAT IS ERRONEOUS AS A MATTER OF LAW."~~

NEW SECTION. **SECTION 2. REPEALER.** SECTION 46-18-117, MCA, IS REPEALED.

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Retroactive applicability APPLICABILITY.** [This act] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act]. A person convicted prior to [the effective date of this act] may file a request for modification of a written judgment, as provided in [section 1], within 120 days after [the effective date of this act]. A person convicted prior to [the effective date of this act] who fails to file a request for modification of a written judgment within 120 days after [the effective date of this act] waives the right to file a request for modification of the written judgment TO ALL CASES CURRENTLY PENDING ON DIRECT REVIEW OR THAT ARE NOT YET FINAL.

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